John Y. Sheridan (DW4) Managing Director of 3rd defendants with more than 12 years' experience in crane operation, in evidence-in-chief had this to say: — "Our crane driver was under the supervision and control of the 2nd defendants as far as the dismantling of this scaffold is concerned". Under cross-examination this is what he said: —

"*Q.* Was crane driver entirely under the control of the second defendants.
A. Yes.
Q. Would he lift any load if he considered it unsafe to do so.
A. They are instructed if the lift is dangerous i.e. to the crane driver or other people, not to do so."

The crane driver in evidence-in-chief said he was working under the control of the hirers and during the time he worked for the hirers, Kurup would tell him what to do and when to move the crane. If the load was too heavy he would refuse to lift it. Under cross-examination he was asked and I quote: —

"*Q.* Was there ever an occasion while employed by the second defendants that you refused to lift.
A. Yes.
Q. How many times.
A. Two or three times.
Q. Other than that you obeyed the instructions of the second defendants.
A. Yes."

In re-examination he said he would refuse to carry out a lift if it was beyond the capacity of the crane. It is quite obvious from this that the hirers could tell the crane driver what work to do but they could not tell him how it was to be done — the final discretion was his. He could in his own discretion refuse to perform a lift if the load was too heavy or if it would cause injury to other people: In other words in the doing of the negligent act he was exercising his own discretion as driver — a discretion which had been vested in him by his regular employers when he was sent out with the vehicle — and he made a mistake with which the hirers had nothing to do.

The general employers of the crane driver had failed to discharge the burden of proving that at the time of the accident the hirers had such control over the crane driver that they were liable for his negligence. The specific instructions given by the general employers to the crane driver were that he was not to lift if the load was too heavy or if it would cause injury to other people.

On the authority of *Karuppan Bhoomidas* v. *Port of Singapore Authority*,[4] it was held following the *Mersey Dock's* case that the onus of proof rests on the general or permanent employers to shift the *prima facie* responsibility for the negligence of servants engaged and paid by such employer to the hirer who for the time being has the advantage of the service rendered. In this case, the burden of proof has not been successfully discharged. It was further held in *Karuppan Bhoomidas'* case that partial control by the hirer is not enough and that entire and absolute control is necessary in order to transfer liability from the shoulders of the employer who engages, pays and regularly employs and can alone dismiss him, on to the shoulders of those who have hired the servants' services from his regular employers.

In my judgment, I find as of fact from the evidence that the injuries sustained by both plaintiffs were caused by the negligence of the crane driver when operating the crane and at that time he was under the employ and control of the general employers i.e. the 3rd defendants.

In the circumstances there will be judgment for both plaintiffs against the 3rd defendants for the amounts agreed upon and costs. The claim against the 1st and 2nd defendants is dismissed with costs.

Order accordingly.

Solicitors: *Murphy & Dunbar; C.B. Yeow & Co.; Lee & Lee; Ng Kian Fong & Co.; Tang-Tan & Tan.*

THE "AUGUST 8TH" COSTAS BACHAS v. "AUGUST 8TH" (OWNERS)

[O.C.J. (Choor Singh J.) February 4, 1980]
[Singapore — Motion in Admiralty in Rem No. 37 of 1978]

Practice and Procedure — Admiralty action — Whether O. 14 procedure available — R.S.C. 1970, O. 14.

This was an application by the defendants to set aside the judgment entered against them on July 31, 1978 in favour of the plaintiff for the sum of $95,909.18. The main issue at the hearing was whether or not Order 14 procedure was available in an Admiralty action.

Held: Admiralty actions are not expressly excluded in our Order 14 and therefore the procedure under Order 14 was available to the plaintiff.

Case referred to:-

(1) *Bolt & Nut Co.* v. *Rowlands & Co. Ltd.* [1964] 2 Q.B. 10.

MOTION IN ADMIRALTY *IN REM.*

Hariadass Ajaib for the plaintiff.

P. Selvadurai for the defendants.

Cur. Adv. Vult.

Choor Singh J.: This is an application by the defendants to set aside the judgment entered against them on July 31, 1978 in favour of the plaintiff for the sum of $95,909.18.

The facts are these. The plaintiff issued the writ in these proceedings on January 13, 1978 claiming wages and other emoluments due to him together with disbursements made by him as the master of the motor vessel "AUGUST 8TH". The defendants entered appearance on February 2, 1978. The plaintiff then took out a summons in chambers for liberty to sign judgment against the defendants under Order 14. This application was opposed by the defendants before the Registrar who gave leave to the defendants to defend the action on condition that the defendants provided security for the sum of $95,909.18 within 14 days failing which the plaintiff was to be at liberty to enter final judgment against the defendants for the sum claimed in the writ of summons. This Order was made by the Registrar on May 10, 1978. The defendants failed to comply with the Order and judgment was entered for the plaintiff against them on July 31, 1978.

The defendants did not appeal against the order

of the Registrar giving them conditional leave to defend but on August 8, 1978 they filed a motion to set aside the judgment entered against them on July 31, 1978 on two grounds:

"(1) the Registrar had no power in an Admiralty *in Rem* action to hear an application for summary judgment under Order 14 of the Rules of the Supreme Court, 1970 and to make any orders thereon. Accordingly the Registrar had acted *ultra vires* his powers; or alternatively,

(2) the Registrar had entered judgment in an amount larger than what was due to the plaintiff."

For some reason this motion was not heard until January 25, 1980.

At the hearing before me the main issue was whether or not Order 14 procedure is available in an Admiralty action. Order 14 rule 1 of the Rules of the Supreme Court, 1970 which came into force on January 2, 1971 reads as follows: —

"O. 14. R. 1(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the court for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by writ other than one which includes —

(a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or

(b) a claim by the plaintiff based on an allegation of fraud.

(3) This Order shall not apply to an action to which Order 81 applies."

The parallel provision in the Rules of the Supreme Court of England is as follows: —

"O. 14. R. 1(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the court for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by writ in the Queen's Bench Division (including the Admiralty Court) or the Chancery Division other than —

(a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution; false imprisonment or seduction,

(b) an action which includes a claim by the plaintiff based on an allegation of fraud, or

(c) an Admiralty action *in rem.*

(3) This Order shall not apply to an action to which Order 86 applies."

It will be seen that whereas subrule (2) of rule 1 of the English Order 14 expressly excludes in paragraph (c) an Admiralty action *in rem* from the scope of Order 14 procedure, there is no such specific exclusion in subrule (2) of rule 1 of our Order 14.

Mr. Selvadurai for the defendants submits that our Order 14 as it now stands is based on the position in England in 1965 and if one looks at the 1965 *White Book* one will see that although subrule (2) of rule 1 of Order 14 does not specifically exclude Admiralty actions *in rem,* the Note at the bottom of page 181 clearly states that "the Order does not apply to Probate or Admiralty actions". A similar Note appears in the 1966 *White Book.* Mr. Selvadurai also refers to *British Shipping Laws,* Vol. 1 (Admiralty Practice) wherein it is emphasised over and over again that it is not possible in Admiralty to apply for summary judgment under Order 14 (see paragraphs 43, 160, 430, 712, 954, 1310). Mr. Selvadurai contends that the practice in the 1979 *White Book* regarding Order 14 procedure is a confirmation of the earlier practice. It does not introduce anything new nor does it change the law. The submission is that Order 14 procedure has never been available in England in an Admiralty action *in rem* and the position is the same today.

The procedure in an Admiralty action in England is governed by Order 75 of the Rules of the Supreme Court, and in Singapore by Order 70 of our Rules which is based on Order 75 of the U.K. Rules. Every application for judgment must be made by motion. Mr. Selvadurai contends that this procedure is mandatory; that Order 14 procedure was not available to the plaintiff; that the Registrar had no jurisdiction to enter judgment under Order 14 and that the judgment is therefore bad in law and must be set aside.

The second ground raised is that the judgment was signed for an amount in excess of what was due to the plaintiff. The defendants object to an item for $3,555.67 which Mr. Selvadurai says was a fine paid by the plaintiff for a customs offence. It is contended that the fine was for a criminal offence; that an employer is not liable for the criminal acts of his employee and that the amount is therefore not recoverable from the defendants. It is submitted that if judgment is entered for a sum which is in excess of what is due, the judgment is fundamentally wrong and cannot be rectified by reducing the amount of the judgment. The authority submitted in support of this submission is *Bolt & Nut Co.* v. *Rowlands & Co. Ltd.*[1]

Mr. Haridas for the plaintiff submits that one must look at the opening words of subrule (2) of rule 1 of Order 14 of the Rules of the Supreme Court of England. The qualifying words are "every action in the Queen's Bench or Chancery Division begun by writ . . ." Admiralty actions are excluded because they cannot be commenced in these two Divisions. The position is the same in the 1965 *White Book* as well as in the 1966 *White Book.* In the 1979 *White Book* there is again express provision in paragraph (c) of subrule (2) which specifically excludes an Admiralty action *in rem.* Mr. Haridas submits that rule 1 in our Order "applies to every action begun by writ". There is no exclusion of Admiralty actions. He contends that if the Rules Committee which drafted our rules intended to exclude Admiralty actions from our Order 14 they would have made a specific provision to that effect. Mr. Haridas maintains that in the absence of any express exclusion, rule 1 of Order 14 applies to all Admiralty actions in Singapore.

As regards the second ground raised by the defendants Mr. Haridas submits that the sum of $3,555.67 was paid by the plaintiff as master of the ship in payment of a fine imposed on the ship. It was not for a criminal offence committed by the plaintiff and accordingly the plaintiff is entitled to recover this sum as a disbursement.

In my judgment the basic question in this case is whether or not the plaintiff is entitled to proceed under Order 14 to obtain summary judgment. In my opinion the answer to the question lies in the express wording of our Order 14. Limitations set out therein do not apply in this case. Admiralty actions are not expressly excluded in our Order 14 and therefore the procedure under Order 14 is available to the plaintiff. In my opinion, reference to the Rules of the Supreme Court of England is of no help because the High Court in England has various Divisions for the more convenient despatch of business and Order 14 procedure has always been available only in the Divisions specified in subrule (2) of rule 1 of Order 14. We have no such Divisions in our High Court and it follows that Order 14 procedure is available in every action begun by a writ save and except actions specified in paragraphs (a) and (b) of subrule (2).

As regards the second ground relied upon by the defendants, there is documentary evidence that the sum of $3,555.67 was paid by the plaintiff for a fine imposed on the ship and accordingly he is entitled to recover this sum as a disbursement made on behalf of the ship. The letter from the Customs Department dated August 21, 1978 and marked Exhibit "CB7" which is referred to in the affidavit of the plaintiff filed on August 24, 1978, states quite clearly that the fine was imposed on the plaintiff in his capacity as master of the vessel and "not in his personal capacity".

For these reasons the application to set aside the judgment entered on July 31, 1978 against the defendants is dismissed with costs.

Application dismissed.

Solicitors: *Netto, Low & Partners; Rodyk & Davidson.*

D.K. GUDGEON v. PROFESSIONAL ENGINEERS BOARD

[O.C.J. (Choor Singh J.) February 6, 1980]
[Singapore — Originating Motion No. 3 of 1979]

Engineer — Improper Conduct — Cancellation of registration by Board — Punishment manifestly excessive.

Administrative Law — Domestic tribunal — Engineer — Improper conduct — Suspension.

The appellant in this case was a registered engineer. The Board of engineers had decided that his conduct amounted to "improper conduct which renders him unfit to be a registered professional engineer". He had allowed a wall to be erected without an approved plan some ten years ago. The said wall collapsed and damaged a number of cars.

Held: the appellant had learnt his lesson and justice will be done if the Order of the Board cancelling his registration was altered to an Order suspending him from practice for one year.

ORIGINATING MOTION.

Nicholas Addison Phillips Q.C. (*M.H. Rubin* with him) for the appellant.

Loh Lin Kok for the respondent.

Cur. Adv. Vult.

Choor Singh J. (delivering oral judgment): Mr. Gudgeon's conduct in this matter has been judged by his peers to amount to "improper conduct which renders him unfit to be a registered professional engineer". There is evidence to support that finding and it would be wrong on the part of this court to disturb that finding when it is supported by evidence. The members of the Board are eminently qualified to judge what does and what does not amount to improper conduct on the part of a professional engineer.

As regards the sentence, in my judgment the punishment imposed on Mr. Gudgeon is manifestly excessive. The Board does not appear to have taken into consideration that they were punishing him for something which he did or failed to do some ten years ago. Furthermore, the members of the Board appear to have been unduly influenced by the fact that the wall collapsed and damaged a number of cars. They seem to have punished him for the collapse of the wall which in my opinion they were not entitled to do. There is no evidence of any incompetence on the part of Mr. Gudgeon. The collapse of the wall was, more likely than not, due to faulty construction and not due to faulty design. The punishment should have been limited to his refusal to regularise an unauthorised retaining wall i.e. his failure to take either remedial action such as strengthening the wall and having it approved or knocking it down and reconstructing it. Mr. Gudgeon persistently refused to do any such thing and was therefore in breach of his professional duty to regularise the position because it was he who had allowed the wall to be erected without an approved plan.

In my opinion, Mr. Gudgeon has learnt his lesson and justice will be done if the Order of the Board cancelling his registration is altered to an Order suspending him from practice for one year. The suspension will commence as from today. The Order on the second charge is to stand.

Mr. Gudgeon will also pay the costs of these proceedings as taxed.

Order accordingly.

Solicitors: *Amarjit, Rubin & Partners; Loh Lin Kok.*